

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2007-022770

06/14/2011

HONORABLE EMMET RONAN

CLERK OF THE COURT
T. Soto
Deputy

ARACAJU INC, et al.

ROGER C DECKER

v.

TRUE NORTH INC, et al.

BRADLEY D WEECH

RYAN W ANDERSON

MINUTE ENTRY

The Court has previously ruled that there are two separate Operating Agreements, one of which governs Adoption Media, LLC and the other governs Adoption Profiles, LLC. The Court has also found that the “Buy/Sell” provisions in these two operating agreements apply to the other six companies that do not have operating agreements. The Court has also considered the numerous pleadings and arguments of counsel, and, in particular, their Briefs Regarding the Buy/Sell Process that should be implemented in this case.

The phrase “terms and conditions” as used in Paragraph 7.7 of the Operating Agreements, is not defined in those Agreements. The facts of this case are very different from the cases cited by the parties on this issue. Those cases dealt with a single business relationship that was governed by some type of written agreement. In the case before the Court, we have a Father/Son business relationship that had two related companies with separate operating agreements containing identical “buy/sell” provisions. In the course of operating these businesses, six other companies were formed. In the process, assets were moved around and liabilities were created, all as part of one overall business plan. The eight business entities are all managed by the two parties and are significantly interrelated. This is not a case where two individuals are trying to dissolve a single business governed by one “buy/sell” provision.

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Father and son created this business. For a variety of reasons, the business relationship is no longer working. The manner in which this business relationship is dissolved is complicated by, among other things, the lack of guidance provided in the language of the “buy/sell” provisions, the number of business entities, the significant degree to which they are intertwined and the animosity of the parties.

The “buy/sell” process, in this very unique business arrangement, must provide the parties with a meaningful way to end their business relationship within the framework they have created. In this case, the phrase “terms and conditions” must envision a proposal by the withdrawing party that allows the parties to dissolve their business relationship. The phrase “terms and conditions”, in the factual context of this case, includes more than just “amount, time and manner of payments”. The withdrawing party must have the ability to craft a proposal that addresses all of the parties’ business entities. Therefore, Nathan, as the withdrawing party, has the power to set the terms and conditions of his Buy/Sell offer subject to the following limitations.

1. He must make a separate Buy/Sell offer for Adoption Media, LLC.
2. He must make a separate Buy/Sell Offer for Adoption Profiles, LLC.
3. He must make one or more Buy/Sell offers, up to a total of six (6), for the remaining companies that do not have written operating agreements.
4. All the offers shall be made at the same time and no later than 5:00 p.m. on Friday, July 15, 2011.

Subject to the above numbered paragraphs, the “Buy/Sell” process shall continue to be governed by the language in paragraph 7.7 of the Operating Agreements. This includes the 180 day time limit for acceptance of the offer, the “all cash at closing” basis and the 90 day time limit for closing after the offer is accepted.

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.